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SUBJECT: ITAMARATY NEGOTIATOR TALKS TRADE

REF: BRASILIA 362

SUMMARY

1. (SBU) EconOff recently attended an American Chamber of Commerce (AmCham) event featuring Ambassador Regis Percy Arslanian, Director of International Negotiations for the Brazilian MFA (Itamaraty). Well-known to U.S. diplomats from his tenure as Brazilian DCM in Washington as well as his stewardship of the FTAA talks, he can often be a very difficult interlocutor. At the AmCham, Arslanian's very frank comments and the subsequent Q&A session were wide-ranging and covered the future of FTAA negotiations, Brazil-U.S. trade, Brazil-EU trade, South American trade, challenges facing Mercosul, Venezuelan participation in Mercosul, alleged anti-Americanism in Itamaraty, and much more. END SUMMARY.

CAVEAT

2. (SBU) While Arslanian's candid remarks at the AmCham certainly represent his views, on a number of issues Foreign Ministry higher-ups likely would have configured the message differently. The best way to convey the tone and substance of Arslanian's presentation is to let him speak for himself. His preferred technique was to ask himself anticipated questions and then to answer them, as illustrated below. Of course, U.S. trade officials, had they been afforded the opportunity, would have answered Arslanian's questions differently.

WHY IS SOUTH-SOUTH TRADE SUCH A PRIORITY FOR BRAZIL?

3. (U) It's not that we don't want Free Trade Agreements (FTAs)

with the U.S. or the European Union (EU); to say so would be irresponsible. The purpose of an FTA is to reduce or zero out tariffs; reduce sanitary, technological, and other non-tariff barriers; and remove market access restrictions. These efforts need to be reciprocal - give and take. The cost-benefit of the negotiation must make sense; the FTA must create commerce. There must be concessions on both sides. We're not being ideological about this; in fact, I've never received orientation from [Minister of Foreign Affairs] Amorim to prioritize any negotiation. They [Itamaraty leadership] want FTAs, and big markets are a priority.

14. (U) Forming bilateral agreements is one way of advancing towards FTAA. In a few years, if all the region's countries enter into bilateral agreements, it will be that much easier to reach a positive result with regards to the FTAA. The phase-out periods of the individual bilateral agreements may be different among the respective countries, but after ten or twelve years all the tariffs would be at zero anyway. And that's FTAA.

WHAT ABOUT THE MERCOSUL-EU FTA?

15. (SBU) We weren't able to close the deal in October of 2004 because Pascal Lamy (former Commissioner for Trade at the European Commission and current WTO Director General) left and our negotiations shut down. The agricultural offers on the EU side were unacceptable. They weren't willing to budge on the most important issue - agriculture. We told the EU there's no point in making a deal without agriculture, and the EU said that at the time it couldn't put that on the table. (NOTE: The AmCham event was held

SAO PAULO 00000357 002 OF 005

shortly before EU's most recent rejection of Mercosul's overtures. EU diplomats have told us that in the March 2006 negotiating session Brazil, and in particular Arslanian, appeared to want more to score points with the press than engage in any actual serious discussions. The GOB leaked its latest offer to the press even before the EU had received it. END NOTE.)

WHAT HAPPENED WITH THE FTAA?

16. (U) You need to understand that the FTAA is a very limited agreement. We can't ignore the U.S., which receives 22 percent of Brazil's exports, but the U.S. is already very open to us. But for agriculture, Brazil's most important sector, the U.S. is very closed; look at orange juice, for example. The orange juice and steel anti-dumping cases have been very troublesome for Brazil. Moreover, there are problems with beef. It has been eight years since Brazil asked the U.S. Department of Agriculture to certify Brazilian meat. And, we're still waiting. Some ask: Why does Brazil only talk about agriculture? Well, it's because American industry is already very open to Brazil. U.S. tariff rates are at 2 percent for industrialized goods. Brazil's industrial tariffs are at 14 percent. If we both go to zero, it would be very hard for Brazil. Brazil has a lot farther to go, from 14 percent to zero. The twenty most significant Brazilian agricultural products exported to the U.S. receive a 60 percent tariff. In Brazil, these products receive only 14 percent tariffs. Brazil doesn't distort like the U.S. does. The FTAA will not go forward because U.S. industry is very open, but agriculture is closed.

AND IF THE U.S. SAID, "WE'LL REDUCE OUR AGRICULTURE BARRIERS"?

17. (U) Even with the elimination of U.S. agriculture protection, the cost of zeroing out industrial tariffs is too high for Brazil. Brazil would have to reduce from 14 percent to zero, whereas the U.S. only has to reduce from 2 percent to zero. There's no equilibrium. As I mentioned before, trade negotiation needs to be reciprocal - give and take. We'd be giving up 14 percent, and the U.S. would only be giving up 2 percent. That's not balanced.

There's more cost than benefit. Moreover, the U.S. would never lower its agricultural barriers. It's not even an economic issue, it's political. At the FTAA discussions in Miami, Governor Jeb Bush, President Bush's brother, spoke to us and said, "The U.S. will never open on agriculture. If it did, orange juice producers in Florida would go out of business. So forget about it." At no time during the FTAA discussions did the U.S. put a reduction of agriculture tariffs on the table. Moreover, USTR Portman at the last Davos talks told Minister Amorim that FTAA is shut because of two impasses: Agriculture on the U.S. side and intellectual property rights (IPR) on the Brazil side. Minister Amorim responded, "If we do what you ask on IPR, will you reduce tariffs on orange juice, tobacco, and sugar?" USTR Portman's answer: "No, we can't do that right now." So, for Brazil there's too much cost, and too little benefit. And it all comes down to costs. As a negotiator, I must look at costs, an equal give and take. There is no room for a "light" or "diet" version of the FTAA.

SO WHAT ARE THE FTAA COSTS TO BRAZIL?

18. (U) The costs to Brazil start with the fact that U.S. FTAs are based on the NAFTA model. Look at Chile, CAFTA - they're NAFTA-based. The NAFTA model might be a good fit for other countries, but not for Brazil. Why? Because the benefits are minimal. We'd get little additional access for industrial goods,

SAO PAULO 00000357 003 OF 005

where our access to the U.S. market is already very good. And we'd get no additional access in the most important area - agriculture. Also, a NAFTA-style FTA would require changes in Brazilian regulatory institutions and laws that cannot be made. We saw the same thing in our EU negotiations. The EU's FTA would require changes in 33 laws and 6 constitutional amendments. It's the same with the FTAA. Brazil would have to substantially change many of its laws, just to comply with the FTAA. I'll give you two examples: telecom and sovereign immunity.

19. (U) Under Brazilian telecommunications laws, if a company wants to operate in the telecommunications field, it needs to be physically established in Brazil. Under the FTAA, the U.S., and the EU in their negotiations, asked for access to Brazilian telecom networks, without having a U.S. company installed here. They want access to our telecom networks without bringing jobs, technology, or any benefit to Brazil. Our telecom laws forbid this. Participants in the telecom market must have an established, regulated operation in Brazil. Brazil would have to rewrite the telecom law to accommodate the U.S. request. For what benefit? We would receive neither jobs nor technology transfer in return.

110. (U) Another example is the issue of sovereign immunity. If a U.S. company sets up operations in Brazil, and can't get a regulatory license, let's say an environmental permit, then under the FTAA the U.S. company could sue the Brazilian government. Brazilian law allows states to sue states, but a company can't sue a state. Can you imagine? Accommodating this request would not only alter a founding principle of our legal system, but it would open the floodgates. Everyone would sue the government. There are many examples like these in both the FTAA and EU negotiations, where accommodating U.S. or EU demands would require Brazil to rewrite its own laws. And I ask again, for what benefit? So from Brazil's view there are three basic impasses with the FTAA: one, agriculture - from high tariffs to anti-dumping cases on orange juice; two, having to restructure Brazilian laws under the FTAA "NAFTA" model; and three, the Buy American Act.

WHAT ABOUT BRAZIL AND IPR UNDER FTAA?

111. (U) The U.S. wants IPR enforcement. Brazil already has WIPO (World Intellectual Property Organization) obligations. Brazil admits that it doesn't have the resources to enforce all of our IPR obligations. But, then again, neither does the U.S. Go to M street in Washington, DC and you can buy a fake Gucci purse. Or go to

Chinatown in Manhattan and you can buy a fake Rolex. Brazil does recognize that piracy hurts Brazilian industry more than it hurts U.S. industries. But Brazil doesn't want to accept additional IPR obligations under FTAA, because we can't enforce 100 percent the ones we already have.

¶12. (U) Some criticize Brazil saying we've had an IPR law for ten years with little effect. That in ten years 20,000 patents have been applied for and only 200 granted. That Brazil is not looking out for the interests of its own companies by refusing to accept IPR provisions in the FTAA. That Brazil is not engaged on the issue and is therefore discouraging technology investment. However, our accepting new IPR obligations under the FTAA that we cannot enforce is not going to resolve any of these problems. The IPR issue will not be resolved in the FTAA forum, but through technical cooperation. It is a symptom of Brazil's lack of resources. That's why we say if the U.S. wants to increase Brazil's IPR effectiveness, why doesn't it give us technology and financial assistance? IPR problems in Brazil are the result of a lack of resources, not a lack of will.

SAO PAULO 00000357 004 OF 005

WHAT ABOUT SUBSIDIES?

¶13. (U) Brazil doesn't have much of a basis to ask the U.S. to reduce subsidies. If we zeroed our tariffs under an FTA, our own industries would be too vulnerable without subsidies. If we were to ask anything it would be to not subsidize those products that are exported within the hemisphere.

WHAT ABOUT 4 + 1 NEGOTIATIONS?

¶14. (U) Brazil believes that in general sub-regional bilateral agreements, for example, like the U.S. agreement with Chile, will facilitate the formation of the FTAA. So that's what we prefer. Brazil, through Mercosul, has been trying to negotiate bilateral agreements with several countries. Canada and Venezuela are two examples. We like the FTAA, but we're not going to wait for it. In the meantime, we'll go ahead with bilateral agreements. Brazil asked for 4 + 1 from USTR Portman, and we are still waiting for a response.

¶15. (U) In November 2005, Brazil sent a letter to USTR to see if we could resolve the FTAA mandate. We even suggested a date and an agenda. We haven't heard back yet. But Mercosul has every interest in pursuing 4 + 1 negotiations. We're not just going to wait around for a resolution on the FTAA mandate to move ahead with more free trade between the U.S. and Brazil. We don't just want a dialogue, but negotiations. The "Rose Garden" 4 + 1 was really just a dialogue. This time around, we'd like to negotiate investment, services, and IPR, although not IPR enforcement. Brazil and Mercosul already have formal proposals drafted for an FTA with the U.S. There's no reason for us to cross our arms waiting on the FTAA.

ISN'T VENEZUELA'S JOINING MERCOSUL A POISON PILL FOR 4 + 1?

¶16. (U) The 4 + 1 discussion has been on the table since December 2004, long before any Mercosul discussions with Venezuela began. We're not worried about Chavez's participation in Mercosul. Venezuela meets its international obligations. And we're sure it will continue to do so as a part of Mercosul. Venezuela would never inhibit Mercosul from negotiating with the U.S. Venezuela signed an adhesion agreement to stick with Mercosul and follow the group. It's analogous to the EU. The EU recently added 10 new members. Hungary isn't going to suddenly start running the show. Nor are any of the new EU countries going to start trying to spoil the EU-Mercosul talks. The ten new EU states didn't start complaining about the EU-Mercosul negotiations, they agreed to join the EU and

go along with what the EU already had in motion. It will be the same with Venezuela. The U.S. recognizes that Venezuela fulfills its international obligations. If not, the U.S. wouldn't buy so much oil from Venezuela.

IS MERCOSUL A LOST CAUSE?

¶17. (U) Some claim that little consensus and little power exists within Mercosul. However, there is full understanding among the four members of Mercosul about our objectives. Politically, we all believe in regional integration. Moreover, commercially we're very diverse. To really enact a customs union without a unified customs service is very difficult. The recent Argentinian MAC accord (reftel), although not good for Mercosul, is the best of the evils available. Without it, Argentina would just start acting

SAO PAULO 00000357 005 OF 005

unilaterally. Such measures will help Mercosul evolve. Although it looks like a step back, it will eventually result in several steps forward. Many people forget that the EU took 50 years to get to where it is today. It's going to take at least that long for Mercosul to reach that point, probably longer. The press tends to evaluate things with a view of about 3 to 5 years out. Government planning looks 10 to 20 years ahead. But I think we need to look at 20 to 30 years before anything really happens with Mercosul.

WHY DOES ITAMARATY SEEM SO ANTI-AMERICAN?

¶18. (U) Some claim that Itamaraty, while reaching out to China, Venezuela, and Bolivia, is turning its back on the U.S. Itamaraty is not anti-American. However, we are anti-NAFTA, or rather against the NAFTA model for the FTAA. Mexico, Chile, and Central America accepted the NAFTA model. But their circumstances are different than Brazil's. Many feel that Chavez is only interested in Mercosul as a way to radicalize his neighbors against the U.S. We, however, feel no hostility toward the U.S. If we did, President Bush would have never come to visit President Lula. Chavez would have to be very pretentious indeed to use Mercosul as an anti-American platform. Rather, we believe that Chavez wants to join Mercosul as a way to legitimize himself before the international community. Brazil's population and economy dwarf Venezuela's. There is no way that Chavez will set the Mercosul agenda. Secretary Rice even recognizes that Brazil has an important role to play in balancing Chavez's rhetoric in the region.

BIO NOTE

¶19. (U) Ambassador Regis Percy Arslanian has been Director of International Negotiations since July 2003. Arslanian serves as deputy to Under Secretary for South America, Ambassador Jos Eduardo Felicio, who is also Brazil's Co-Chair for the Free Trade Area of the Americas negotiations. Arslanian's department is responsible for conducting trade negotiations between Mercosul and partners outside Latin America, including the EU, India, South African Customs Union, and Israel, in addition to its leadership role in the FTAA negotiations. For the first six months of 2003, Arslanian served as Advisor for Economic and Business Affairs to MFA Secretary General Samuel Pinheiros Guimaraes. Arslanian is a career diplomat who entered the foreign service in 1975. Prior to his current position, he served as DCM in Brazil's Embassy in Washington (1997-2001). Arslanian also served in Brazil's embassies in Bonn (1978-81) and Caracas (1981-87). He was Counselor for Economic Affairs in Brazil's Mission to the U.N. in New York (1990-94). In the MFA, Arslanian served as Chief of the Commercial Policy Division twice, from 1987 to 1990 and from 1994 to 1997, participating in GATT and WTO negotiations as well as consulting on bilateral issues with the United States, Canada, and the European Union. Arslanian was a member of the Brazilian delegation attending FTAA Ministerials in Denver (1995), Cartagena (1996) and Belo Horizonte (1997). End Bio Note.

¶20. (U) This cable was coordinated with Embassy Brasilia.

McMullen